

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1165

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

4862L.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 456.950, RSMo, and to enact in lieu thereof one new section relating to qualified spousal trusts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 456.950, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.950, to read as follows:

456.950. 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are husband and wife at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors all property or interests in property transferred to, or held by, the trustee are [either]:

(a) Held and administered in one trust for the benefit of both settlors, revocable by either or both settlors acting together while either or both are alive, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the survivor's life; or

(b) Held and administered in two separate shares of one trust for the benefit of each of the settlors, with the trust revocable by each settlor with respect to that settlor's separate share of that trust without the participation or consent of the other settlor, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from that settlor's separate share for that settlor's life; **or**

(c) **Held and administered under the terms and conditions contained in paragraphs (a) and (b) of this subdivision.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 2. A qualified spousal trust may contain any other trust terms that are not inconsistent
17 with the provisions of this section.

18 3. Property or interests in property held as tenants by the entirety by a husband and wife
19 that is at any time transferred to the trustee of a qualified spousal trust of which the husband and
20 wife are the settlors shall be held and administered as provided by the trust terms in accordance
21 with [either] paragraph (a) [or] , (b), **or (c)** of subdivision (2) of subsection 1 of this section, and
22 all such property and interests in property, including the proceeds thereof, the income thereon,
23 and any property into which such property, proceeds, or income may be converted, shall
24 thereafter have the same immunity from the claims of the separate creditors of the settlors as
25 would have existed if the settlors had continued to hold that property as husband and wife as
26 tenants by the entirety, so long as:

27 (1) Both settlors are alive and remain married; and

28 (2) The property, proceeds, or income continue to be held in trust by the trustee of the
29 qualified spousal trust.

30 4. Property or interests in property held by a husband and wife or held in the sole name
31 of a husband or wife that is not held as tenants by the entirety and is transferred to a qualified
32 spousal trust shall be held as directed in the qualified spousal trust's governing instrument or in
33 the instrument of transfer and the rights of any claimant to any interest in that property shall not
34 be affected by this section.

35 5. Upon the death of each settlor, all property and interests in property held by the trustee
36 of the qualified spousal trust shall be distributed as directed by the then current terms of the
37 governing instrument of such trust. Upon the death of the first settlor to die, if immediately prior
38 to death the predeceased settlor's interest in the qualified spousal trust was then held in such
39 settlor's separate share, the property or interests in property in such settlor's separate share may
40 pass into an irrevocable trust for the benefit of the surviving settlor upon such terms as the
41 governing instrument shall direct, including without limitation a spendthrift provision as
42 provided in section 456.5-502.

43 6. No transfer by a husband and wife as settlors to a qualified spousal trust shall affect
44 or change either settlor's marital property rights to the transferred property or interest therein
45 immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless
46 both spouses otherwise expressly agree in writing.

47 7. This section shall apply to all trusts which fulfill the criteria set forth in this section
48 for a qualified spousal trust regardless of whether such trust was created before or after
49 August 28, 2011.

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